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6 JULIO SANDOVAL, G44696,  
7 Petitioner,  
8 v.  
9 THERESA CISNEROS, Warden,  
10 Respondent.

Case No. [21-cv-01783-CRB](#) (PR)

**ORDER OF DISMISSAL WITH  
INSTRUCTIONS TO FILE MOTION IN  
STAYED CASE**

(ECF Nos. 2 & 4)

11 On December 13, 2011, petitioner filed a pro se petition for a writ of habeas corpus under  
12 28 U.S.C. § 2254 challenging a 2008 conviction from Santa Clara County Superior Court. The  
13 petition was filed as civil case number 11-6246 and assigned to the undersigned. See Sandoval v.  
14 Biter, No. 11-cv-6246-CRB (N.D. Cal. filed Dec. 13, 2011).

15 On April 12, 2012, the court found that the claims in the petition – (1) insufficient  
16 evidence supported the premeditation and deliberation element of petitioner’s first degree murder  
17 conviction; (2) denial of equal protection because an aider and abettor of an assault may be  
18 convicted of murder, without any finding of malice, under the natural and probable consequences  
19 doctrine; and (3) ineffective assistance of counsel for failing to interview and present a witness –  
20 appeared colorable under § 2254 and ordered respondent to show cause why a writ of habeas  
21 corpus should not be granted.

22 On July 11, 2012, respondent instead moved to dismiss the petition for failure to exhaust  
23 state judicial remedies as to all claims because petitioner had not exhausted state judicial remedies  
24 as to his claim of ineffective assistance of counsel.

25 On September 19, 2012, the court granted the motion and, pursuant to the law of the  
26 circuit, asked petitioner whether he wished to (1) withdraw his unexhausted claim and proceed  
27 only on his exhausted claims, or (2) dismiss the entire mixed petition and return to federal court  
28 with a new petition once all claims are exhausted. The court also informed petitioner that he may

1 be able to seek a stay of the proceedings “if he can show that there was good cause for his failure  
2 to exhaust the unexhausted claim in state court, and that the claim is potentially meritorious.”  
3 Sept. 19, 2012 Order at 2 n.1 (citing Rhines v. Webber, 544 U.S. 269, 277 (2005)).

4 On October 15, 2012, petitioner filed a response seeking a stay of proceedings until he can  
5 exhaust his claim of ineffective assistance of counsel in the state courts. He argued that he was  
6 not afforded a fair chance to exhaust his claim because he was not afforded access to the prison  
7 law library.

8 On October 23, 2012, the court granted petitioner’s request for a stay of his mixed federal  
9 habeas petition until he can exhaust his claim of ineffective assistance of counsel in the state  
10 courts. The court instructed the clerk to administratively close the case and informed petitioner  
11 that “[n]othing further will take place in this matter until petitioner exhausts his claim of  
12 ineffective assistance of counsel all the way thru the Supreme Court of California and, within 30  
13 days thereafter, moves to reopen the case and lift the court’s stay.” Oct. 23, 2012 Order at 2.

14 On August 31, 2020, nearly eight years after the court stayed petitioner’s mixed federal  
15 petition, petitioner filed a second federal petition for a writ of habeas corpus challenging his 2008  
16 conviction from Santa Clara County Superior Court in the United States District Court for the  
17 Eastern District of California. The petition was transferred to this court, filed as civil case number  
18 20- 6371 and assigned to the undersigned. See In re Sandoval, No. 20-cv-6371-CRB (N.D. Cal.  
19 filed Sept. 10, 2020). The second federal petition raised the first two claims petitioner raised in  
20 his first federal petition – (1) insufficient evidence supported the premeditation and deliberation  
21 element of his first degree murder conviction; and (2) denial of equal protection because an aider  
22 and abettor of an assault may be convicted of murder, without any finding of malice, under the  
23 natural and probable consequences doctrine – as well as new recently exhausted claims.

24 On September 23, 2020, the court dismissed petitioner’s second federal petition “without  
25 prejudice to petitioner filing a motion in his first federal habeas case – Sandoval v. Biter, No. 11-  
26 cv-6246-CRB – to reopen the case, lift the court’s stay and file an amended petition raising all  
27 exhausted claims petitioner wishes to pursue in federal habeas review.” Sept. 23, 2020 Order at 2.

28 On March 16, 2021, petitioner filed a third federal habeas petition challenging his 2008  
conviction from Santa Clara County Superior Court rather than file a motion to reopen and lift the

1 court's stay in his first federal habeas case, as instructed. The third federal habeas petition was  
2 filed as the instant civil case number 21-1783 and assigned to the undersigned. See Sandoval v.  
3 Cisneros, No. 21-cv-1783-CRB (N.D. Cal. filed Mar. 16, 2021). The third federal petition, like  
4 the second federal habeas petition, raises the first two claims petitioner raised in his first federal  
5 petition – (1) insufficient evidence supported the premeditation and deliberation element of his  
6 first degree murder conviction; and (2) denial of equal protection because an aider and abettor of  
7 an assault may be convicted of murder, without any finding of malice, under the natural and  
8 probable consequences doctrine – as well as new recently exhausted claims.

9 Again, in the interest of justice and good cause appearing therefor, the instant third federal  
10 habeas petition is DISMISSED without prejudice to petitioner filing a motion in his stayed first  
11 federal habeas case – Sandoval v. Biter, No. 11-cv-6246-CRB – to reopen the case, lift the court's  
12 stay and file an amended petition raising all exhausted claims petitioner wishes to pursue on  
13 federal habeas review. Put simply, petitioner is instructed to file a motion in his stayed first  
14 federal habeas case – Sandoval v. Biter, No. 11-cv-6246-CRB – asking the court to reopen the  
15 case and lift the court's stay, and to permit him to file a proposed amended petition raising all  
16 exhausted claims petitioner wishes to pursue on federal habeas review. Petitioner should explain  
17 why the court should grant his motion to reopen and lift the court's stay so many years after the  
18 court granted his October 15, 2012 motion to stay proceedings until he could exhaust his claim of  
19 ineffective assistance of counsel in the state courts, and petitioner should attach to the motion his  
20 proposed amended habeas petition.

21 The clerk is instructed to close the instant case – Sandoval v. Cisneros, No. 21-1783-CRB  
22 – and terminate petitioner's motion for a stay of these proceedings (ECF No. 4) as moot. But  
23 based solely on petitioner's affidavit of poverty, his request to proceed in forma pauperis (ECF  
24 No. 2) is GRANTED.

25 **IT IS SO ORDERED.**

26 Dated: April 20, 2021

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CHARLES R. BREYER  
United States District Judge